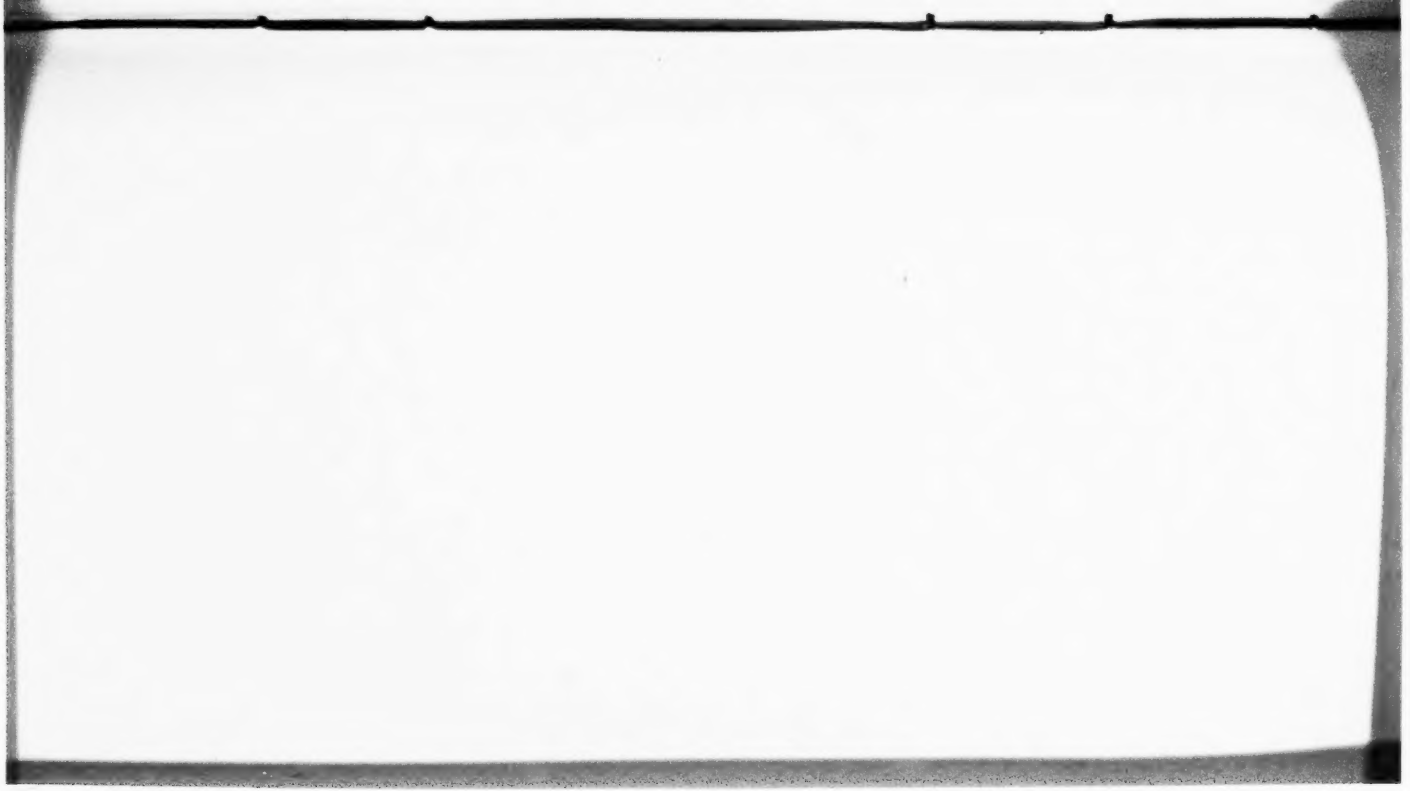

No. 279. 58

Motion to advance.

Filed Apr. 1, 1899.

JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 279.

DAVID ARMSTRONG, RECEIVER OF THE FIDELITY NATIONAL BANK OF CINCINNATI, OHIO, APPELLANT,

vs.

THE CHEMICAL NATIONAL BANK OF NEW YORK, APPELLEE.

MOTION TO ADVANCE CAUSE FOR HEARING.

Now come the counsel for the appellant and the appellee and move the court that this cause be taken up for hearing out of its order upon the docket and be set down for oral argument at an early day for the following reasons:

Many of the questions involved in this case are also involved in case No. 206 upon the docket of this court of this

term entitled H. F. Auten, as receiver of the First National Bank of Little Rock, Arkansas, plaintiff in error, *vs.* United States National Bank, defendant in error, which was argued and submitted on the 9th day of March, 1899. The court is now familiar with the facts in that case, so we do not attempt to state them.

For the facts in the case at bar the court is respectfully referred to the statement prefixed to the opinion of the court below (Record, pp. 283–295) and to the briefs of counsel, which are on file. They are too voluminous to be stated in this motion; but the following summary is deemed sufficient to show the resemblance between the cases:

In the case at bar the appellee, being the New York correspondent of the Fidelity National Bank of Cincinnati, Ohio, upon the application of the vice-president of the latter bank gave it a credit by way of loan upon the books of the appellee in the sum of $300,000 early in March, 1887. No express authority was given by the board of directors of the Fidelity bank for the making of this loan nor did the books of that bank contain any reference thereto. Upon the same day that the loan was credited in New York the clerks of the Fidelity bank in Cincinnati, by direction of its vice-president, credited him and charged the appellee with the sum of $300,000. Of this the appellee had no notice. The checks regularly drawn by the Fidelity bank upon the appellee during the month of March, 1887, and paid by the appellee exceeded in amount the sum credited by the appellee to the Fidelity bank, as above mentioned, with all other credits to that bank with the appellee. Early in April, 1887, the appellee rendered to the Fidelity bank a monthly account current showing this loan, and no objection was ever made to this account upon this ground. The appellee, having presented a claim upon this loan and the same having been rejected, filed its bill in equity to establish its claim. In addition to the matters above mentioned, evidence was offered which

the appellee claims tended to show that by custom among bankers the officers of banks are presumed to have authority to borrow money in behalf of their banks; that the directors of the Fidelity national bank had entrusted the management of that bank to its vice-president, and thereby authorized him to make the loan, and that the loan had been ratified by the Fidelity national bank before its insolvency was declared and by its receiver and stockholders thereafter.

In each case counsel have discussed the questions as to how far borrowing is incidental to banking; as to the authority of national banks to borrow money; as to the method in which this is done and the scope of the apparent authority of the officers of the bank in that connection; as to what circumstances justify a lending bank in presuming that the loan was properly authorized by the borrowing bank; as to what constitutes ratification, and as to what state of facts will make the borrowing bank liable as having enjoyed the benefit of the transaction.

The briefs in No. 279 have been filed, and the case is ready for argument, on three days' notice, at any time that may be assigned by the court. Counsel for the parties hereto respectfully suggest that they desire to present their views upon these questions while No. 206 is under consideration and before the court has reached a conclusion thereon, and believe they can be of assistance to the court in reaching a correct conclusion upon the questions which are common to the two cases. While several questions are thus common, there are other matters involved in No. 279 which are not involved in No. 206. For this reason counsel in No. 279 had not thought they would properly protect the interests of their clients by suggesting that the two cases be heard together as one. They had anticipated that No. 279 would probably be reached in its regular order before a conclusion was reached upon No. 206; but the approaching end of the term warns them that this anticipation may not

be realized. Therefore they now respectfully urge the court to assign an early day for the hearing of No. 279.

JOHN W. HERRON,
F. F. OLDHAM,
Counsel for Appellant.

WM. WORTHINGTON,
Of Counsel for Appellee.

This motion may be submitted at any time without further notice.

CINCINNATI, OHIO, *March* 20, 1899.

JOHN W. HERRON,
F. F. OLDHAM,
Counsel for Appellant.

WM. WORTHINGTON,
Of Counsel for Appellee.